IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1665 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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FULIBEN BUDHABHAI RATHOD & 4 - Appellant(s)
Versus
HARIBHAI PATHABHAI RATHOD & 1 - Defendant(s)

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Appearance :
MR BN RAVAL for Appellant(s) : 1 - 5.(MR JJ SHAH) for Appellant(s) : 1 - 5.
None for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 04/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellants have challenged the judgement and award dated 15.12.87 passed by the Motor Accident Claims Tribunal (Special), Ahmedabad (Rural) at Narol whereby the Tribunal dismissed the claim petition of the appellants.

2. The appellants had filed claim petition seeking compensation to the tune of Rs. 100000/- in respect of the accident which occurred on 24.05.82 when the

deceased had taken the tractor of the opponent no.1 on hire for grinding the *Bajari dundas* in the field of opponent no.1. It is the say of the appellants that while the opponent no.1 was grinding the *bajari* with the help of the tractor, the deceased was arranging the grinding work when the *dantali* used for placing the *bajari dundas* got entangled in the wheel of the tractor as a result of which the deceased fell down on account of a sudden jerk and sustained serious injuries. However, the deceased succumbed to the said injuries while being taken to the hospital. The claim petition came to be filed under the said circumstances and the Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel appearing for the appellants has contended that the Tribunal ought to have considered that there is negligence on the part of the opponent no.1 in view of the fact that there was documentary evidence.

4. Heard learned counsel for the parties. I have gone through the award of the Tribunal and the

materials placed on record. The Tribunal has gone through the oral and documentary evidence in detail and concluded that the appellants failed to prove that the opponent no.1 was rash and negligent in driving the tractor at the time of the accident in question. The Tribunal has gone through the statement of the original applicant no.3 in the complaint Ex. 55 who was present at the time of the accident and has observed that as soon as the deceased was run over by the rear wheel of the tractor, the opponent no.1 applied brake and stopped the tractor. The Tribunal has further observed that it was the duty of the deceased to see that his *dantali* did not get entangled in the wheel of the tractor and even if it was entangled he should have left the handle of that *dantali* so as to avoid the accident. I am in complete agreement with the reasonings adopted by the Tribunal. It cannot be said from the facts and circumstances of the case that the opponent no.1 was at all rash and negligent in driving the said tractor at the time of the accident in question as he could not have foreseen that the deceased would be negligent in not keeping

his *dantali* beyond the reach of the wheels of the said tractor and such entanglement of the dantali would take place immediately. Therefore, in view of the fact that the appellants have failed to prove the negligence of the opponent no.1, if any, in the accident, I am not inclined to entertain this appeal.

5. In the premises aforesaid, appeal is dismissed. No order as to costs.

(K.S. JHAVERI, J.)

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